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The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Camille Sebastien Perry.

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## DIGEST

Present law (R.S. 9:355.1) provides that "equal physical custody" means that the parents share equal parental authority of the child absent a court order to the contrary.

Proposed (Comment (b) under R.S. 9:355.2) provides that "equal physical custody" refers to a custody arrangement under which persons have equal or approximately equal physical custody.

Present law (R.S. 9:355.1) provides a definition of "parent entitled to primary custody."

Proposed law deletes this definition of a term not used elsewhere in family law.

Present law (R.S. 9:355.1) provides a definition of "principal residence of a child."

Proposed law (R.S. 9:355.1) retains present law.

Present law (R.S. 9:355.1) provides that "relocation" means an intent to establish the residence of the child outside of the state, an intent to establish the residence of the child at any location within the state that is at a distance of more than 150 miles from the other parent, an intent to establish the residence of the child at a distance of more than 150 miles from the domicile of the primary custodian, or a change in the principal residence of a child for a period of sixty days or more.

Proposed law (R.S. 9:355.1 and R.S. 9:355.2(B)(1)) retains present law, in part.

Proposed law (R.S. 9:355.2) changes present law to provide that the provisions regarding relocation of a child's residence shall apply when there is an intent to establish the principal residence of a child at any location within the state that is at a distance of more than 100 miles from the domicile of the other parent, when there is an intent to establish the principal residence of a child at a distance of more than 100 miles from the current principal residence of the child, or when there is an intent to establish the principal residence of a child at a distance of more than 100 miles from the domicile of a person entitled to object to relocation of the child's residence.

Present law (R.S. 9:355.2) provides for the applicability of the provisions regarding relocation of a child's residence.

Proposed law (R.S. 9:355.2) retains present law, in part and changes present law to state a distance factor for the application of the relocation provisions, and to change the phrase "parents of a child" to "persons required to give notice of and persons entitled to object to a proposed relocation."

Present law (R.S. 9:355.2) provides that the provisions of the present law requiring the party proposing relocation to notify a person entitled to receive notice of the details of the proposed move shall not apply in certain situations, such as those involving family violence and domestic abuse.

Proposed law provides that when an injunction has been granted prohibiting a spouse from harassing the other spouse in a proceeding for divorce, there is insufficient justification for exempting the proposed relocation from the requirements of the child relocation statutes.

Proposed law (R.S. 9:355.3) authorizes the following persons to propose a relocation of a child's principal residence:

- (1) A person designated in a court decree as the sole custodian.
- (2) A person designated in a court decree as the domiciliary parent in a joint custody arrangement.
- (3) A person sharing equal physical custody under a court decree.
- (4) A person sharing equal parental authority under Chapter 5 of Title VII of Book I of the Louisiana Civil Code.
- (5) A person who is the natural tutor of a child born outside of marriage.

Present law (R.S. 9:355.3) provides for a notice of proposed relocation of child.

Proposed law (R.S. 9:355.4) retains present law, in part and changes present law to modify references from "parent" to "persons."

Present law (R.S. 9:355.4) provides for the mailing of a notice of a proposed relocation address.

Proposed law (R.S. 9:355.5) retains present law, in part and changes present law to modify references from "parent" to "persons," to provide that information relative to cellular phone numbers shall be given, and to provide for a proposed revised schedule of physical custody.

Present law (R.S. 9:355.6) provides for the failure to give notice of relocation.

Proposed law (R.S. 9:355.6) retains present law, in part and changes present law to modify references from "parent" to "persons," and eliminates court authorization to consider an award of attorney fees to the person objecting to relocation by the party proposing relocation when there is a failure to provide notice for these matters.

Proposed law (R.S. 9:355.7) requires a person entitled to object to a proposed relocation of the principal residence of a child to initiate a summary proceeding objecting to the proposed relocation within 30 days after receipt of the notice, except for a person with equal physical custody of a child under a court decree, and requires a person with equal physical custody of a

child under a court decree who desires to relocate to comply with notice requirements.

Proposed law (R.S. 9:355.8) limits an objection to relocation to a person recognized as a parent or awarded custody, but authorizes a non-parent who has been awarded visitation to initiate a proceeding to obtain a revised visitation schedule.

Proposed law (R.S. 9:355.9) authorizes the person required to give notice to relocate the principal residence of a child after providing the required notice, unless a person entitled to object initiates a summary proceeding to prevent the relocation within 30 days after receipt of the notice, except when persons have equal physical custody of the child under a court decree.

Present law (R.S. 9:355.5) provides for a court authorization to relocate.

Proposed law (R.S. 9:355.10) retains present law, in part and changes present law to modify references from "parent" to "persons" and provides for the failure to timely object to a proposed relocation.

Present law (R.S. 9:355.10) provides for a temporary order allowing a parent to relocate.

Proposed law (R.S. 9:355.11) retains present law, in part and changes present law to modify references from "parent" to "persons," to provide for physical custody, and to provide that an order not in compliance is null and void.

Present law (R.S. 9:355.9) requires a hearing on either a temporary or permanent order permitting or restricting relocation to be accorded appropriate priority on the court's docket.

Proposed law (R.S. 9:355.12) changes present law to provide that a hearing on the objection to the proposed relocation shall be held within 30 days from the filing of the objection.

Present law (R.S. 9:355.12) provides for the factors that a court shall consider in determining if a relocation is in the best interest of the child.

Proposed law (R.S. 9:355.13) retains present law, in part and changes present law to provide that the court shall consider "all relevant factors," to modify references from "parent" to "persons," to provide for physical custody, and to provide for harassment by a person seeking or opposing relocation.

Present law (R.S. 9:355.8) provides for the appointment of a mental health expert.

Proposed law (R.S. 9:355.14) retains present law, in part and changes present law to provide that the court on motion of either party or on its own motion may appoint a mental health expert to render an opinion on the effect of the proposed relocation on the child.

Present law (R.S. 9:355.15) requires the court to apply the factors concerning relocation in making its initial determination, if the issue of relocation is presented at the initial hearing to determine custody of and visitation with a child.

Proposed law (R.S. 9:355.15) retains present law, in part and changes present law to provide that the court "shall also consider" rather than "apply" the factors to determine a contested relocation at an initial hearing.

Present law (R.S. 9:355.13) provides that the relocating parent has the burden of proof that the proposed relocation is made in good faith and is in the best interest of the child and requires the court, in determining the child's best interest, to consider the benefits which the child will derive either directly or indirectly from an enhancement in the relocating parent's general quality of life.

Proposed law (R.S. 9:355.16) retains present law, in part and changes present law to modify references from "parent" to "persons" and deletes the provision requiring the court to consider the enhancement on the child's life that relocation might create.

Present law (R.S. 9:355.17) provides that if the court grants authorization to relocate, the court may retain continuing, exclusive jurisdiction of the case after relocation of the child as long as the non-relocating parent remains in the state.

Proposed law deletes this provision.

Present law (R.S. 9:355.11) provides that giving notice of a proposed relocation of a child shall not constitute a change of circumstance warranting a change of custody, but moving without prior notice or moving in violation of a court order may constitute a change of circumstances warranting a modification of custody.

Proposed law (R.S. 9:355.17) provides that giving notice of a proposed relocation shall not constitute a change of circumstance warranting a change of custody, but relocating without prior notice if there is a court order awarding custody or relocating in violation of a court order may constitute a change of circumstances warranting a modification of custody.

Present law (R.S. 9:355.14) provides that if relocation of a child is permitted, the court may require the parent relocating the child to provide reasonable security guaranteeing that the court ordered visitation with the child will not be interrupted or interfered with by the relocating party.

Proposed law (R.S. 9:355.18) retains present law, in part and changes present law to modify references from "parent" to "persons" and to provide for physical custody.

Present law (R.S. 9:355.16) provides for sanctions for unwarranted or frivolous proposals to relocate the child or an objection to relocation.

Proposed law (R.S. 9:355.19) retains present law, in part and changes present law to modify references from "parent" to "persons."

Proposed law provides that the provisions of the proposed law shall be effective on August 15, 2010 and shall not apply to any case that is being litigated or appealed in or to any court of this state wherein the custody of a child is an issue due to the relocation of a party on the effective

date of the proposed law; however, any subsequent relocation by a party after final disposition of such litigation pending on the effective date of the proposed law shall be governed by it.

(Amends R.S. 9:355.1- 355.19)